

REMARKS

This Amendment and election are filed in response to the Restriction Requirement dated March 14, 2006.

Restriction Requirement

Restriction to one of the following inventions is required under 35 USC 121:

- I. Claims 1-9, drawn to a neo-cartilage construct, classified in class 424, subclass 423.
- II. Claims 10-20, drawn to a method for fabrication of a three-dimensional neo-cartilage construct, classified in class 435, subclass 395.

Examiner argues that inventions are independent or distinct, each from the other because:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product, or (2) that the product as claimed can be made by another and materially different process. In the instant case, the construct of the claims of invention I can be produced by a method different than required by the claims of invention II. For example, the construct of invention I can be prepared by adding isolated chondrocytes to the matrix without steps of expanding chondrocytes and suspending the expanded chondrocytes as required by the claims of invention II.

Examining inventions I and II together will be a serious burden due to different searches and considerations for applying prior art required due to difference in scope and content of the claims of inventions I and II.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed and, (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the Examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 USC 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant elects, with traverse, to prosecute Group I, claims 1-9, now canceled and replaced with new claims 21-42. Traverse is based on the grounds that by searching the subject matter, namely a neo-cartilage construct, for claims 21-42, Examiner would by necessity also uncover method for preparation of such neo-cartilage construct.

The elected claims 1-9 as well as non-elected claims 10-20 have been canceled. New claims 21-42 have been added.

Examination of the newly added claims directed to the elected invention is respectfully requested.

Respectfully submitted,

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Hana VERNY (Reg. No. 30,518)  
Attorney of Record

PETERS, VERNY, JONES, SCHMITT & ASTON LLP  
425 Sherman Avenue, Suite 230  
Palo Alto, CA 94306  
TEL 650 324 1677 / FAX 650 324 1678  
Atty. Dkt.: 3831.08  
Customer No.: 23308